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No. 95-1268

# In the Supreme Court of the United States

OCTOBER TERM, 1995

STATE OF MARYLAND, PETITIONER

*v.*

JERRY LEE WILSON

*ON WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND*

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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24 pp

## QUESTION PRESENTED

Whether a police officer who has made a lawful traffic stop of a vehicle may order a passenger to get out of the vehicle without any particularized suspicion.

## TABLE OF CONTENTS


| | Page |
|---|---|
| Interest of the United States | 1 |
| Statement | 2 |
| Summary of argument | 4 |
| Argument: | |
| A police officer may, consistent with the Fourth Amendment, routinely order a passenger to exit a vehicle during a lawful traffic stop | 6 |
| A. The safety interests of officers making lawful traffic stops are legitimate and weighty | 8 |
| B. The intrusion caused by a police officer's request that a passenger exit a lawfully stopped vehicle is *de minimis* and does not outweigh the safety interests of the officer making the stop | 12 |
| C. The state court's requirement of particularized suspicion is unsound | 15 |
| Conclusion | 21 |


## TABLE OF AUTHORITIES

Cases:


| | |
|---|---|
| *Adams* v. *Williams*, 407 U.S. 143 (1972) | 8, 14 |
| *Berkemer* v. *McCarty*, 468 U.S. 420 (1984) | 13, 14, 20 |
| *California* v. *Carney*, 471 U.S. 386 (1985) | 12 |
| *Cardwell* v. *Lewis*, 417 U.S. 583 (1974) | 12 |
| *Coolidge* v. *New Hampshire*, 403 U.S. 443 (1971) | 13 |
| *Katz* v. *United States*, 389 U.S. 347 (.967) | 12 |
| *Michigan Dep't of State Police* v. *Sitz*, 496 U.S. 444 (1990) | 18 |
| *Michigan* v. *Long*, 463 U.S. 1032 (1983) | 8 |
| *Michigan* v. *Summers*, 452 U.S. 692 (1981) | 19 |
| *New Jersey* v. *T.L.O.*, 469 U.S. 325 (1985) | 6 |
| *New York* v. *Class*, 475 U.S. 106 (1986) | 10, 12, 14, 17 |

Cases—Continued:


| | Page |
|---|---|
| *Pennsylvania* v. *Mimms*, 434 U.S. 106 (1977) | 2, 3, 4, 6, 7, 8, 15, 16, 17, 18, 20 |
| *Ruvalcaba* v. *City of Los Angeles*, 64 F.3d 1323 (9th Cir. 1995), cert. denied, 116 S. Ct. 1841 (1996) | 11 |
| *Skinner* v. *Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989) | 7 |
| *Terry* v. *Ohio*, 392 U.S. 1 (1968) | 6, 14, 19 |
| *Texas* v. *Brown*, 460 U.S. 730 (1983) | 13 |
| *United States* v. *Dunn*, 480 U.S. 294 (1987) | 13 |
| *United States* v. *Hensley*, 469 U.S. 221 (1985) | 13 |
| *United States* v. *Kimball*, 25 F.3d 1 (1st Cir. 1994) | 16 |
| *United States* v. *Lee*, 274 U.S. 559 (1927) | 13 |
| *United States* v. *Martinez-Fuerte*, 428 U.S. 543 (1976) | 18 |
| *United States* v. *McKneely*, 6 F.3d 1447 (10th Cir. 1993) | 16 |
| *United States* v. *Roberson*, 6 F.3d 1088 (5th Cir. 1993), cert. denied, 114 S. Ct. 1230, 114 S. Ct. 1322, and 1383 (1994) | 16 |
| *United States* v. *Robinson*, 414 U.S. 218 (1973) | 8 |
| *United States* v. *Sharpe*, 470 U.S. 675 (1985) | 14-15 |
| *Vernonia Sch. Dist. 47J* v. *Acton*, 115 S. Ct. 2386 (1995) | 7, 18 |
| *Whren* v. *United States*, 116 S. Ct. 1769 (1996) | 13 |


Constitution:


| | |
|---|---|
| U.S. Const. Amend. IV | *passim* |


Miscellaneous:


| | |
|---|---|
| David H. Bayley, "The Tactical Choices of Police Patrol Officers," *in* 5 *Police and Law Enforcement*, (Daniel B. Kennedy & Robert J. Homant eds. 1987) | 10 |




Miscellaneous—Continued:


| | Page |
|---|---|
| U.S. Dep't of Justice Federal Bureau of Investigation, *Killed in the Line of Duty: A Study of Felonious Killings of Law Enforcement Officers* (Sept. 1992) | 9, 10, 11 |
| U.S. Dep't of Justice Federal Bureau of Investigation, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 1994* (1994) | 8-9 |

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**BRIEF FOR THE UNITED STATES**
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## INTEREST OF THE UNITED STATES

This case presents the question whether a police officer who has made a lawful traffic stop of a motor vehicle may order a passenger to get out of the vehicle without violating the passenger's rights under the Fourth Amendment. The Court's resolution of this question is likely to affect the admissibility of evidence in federal criminal prosecutions. In addition, federal law enforcement officers routinely stop motor vehicles, and the conduct of those officers will be governed by the Court's ruling in this case. Accordingly, the United States has an interest in the proper resolution of the question presented.

## STATEMENT

1. On June 8, 1994, Maryland State Police Trooper David Hughes stopped a Nissan Maxima for speeding on Interstate 95 in Baltimore, Maryland. The car had three occupants. As Trooper Hughes approached the car, the driver, Terrence McNichol, got out of the car. At the officer's request, McNichol produced his driver's license and told Trooper Hughes that rental documents for the Nissan were in the car. Trooper Hughes requested that McNichol return to the car to retrieve the documents. After McNichol reentered the car, Trooper Hughes directed respondent, who was sitting in the front passenger seat of the car, to get out of the car and to step back toward the police car. Trooper Hughes, who had observed some furtive movements in the car by its two passengers before the stop, wished to speak with each individual in the car one at a time. As respondent got out of the car, crack cocaine fell from his right front pants leg to the ground. Trooper Hughes then placed respondent under arrest. Pet. App. 2a-3a, 33a-34a; J.A. 7-17, 23-26, 31-32, 35-37.

2. Respondent was charged with possession of cocaine with intent to distribute and related offenses. Pet. App. 1a. He moved to suppress the evidence seized at the time of his arrest, arguing that Trooper Hughes had violated the Fourth Amendment by ordering him to get out of the car. The trial court granted the motion to suppress. Pet. App. 33a-35a. Distinguishing this Court's decision in *Pennsylvania* v. *Mimms*, 434 U.S. 106 (1977) (per curiam), in which the Court held that an officer who makes a valid traffic stop may order the driver to get out of the vehicle, the trial court ruled that an officer making a



traffic stop may order a passenger out of the vehicle only if he has reasonable suspicion that the passenger poses a threat to his safety. Pet. App. 34a-35a. In this case, the court found that Trooper Hughes "could not have had a reasonable suspicion that [respondent] was armed and dangerous" because he allowed McNichol to return to the car to retrieve the rental documents. *Id.* at 35a.

3. The Court of Special Appeals affirmed. Pet. App. 1a-32a. The court concluded that the reasons given in *Mimms* for having the driver exit a vehicle stopped for a traffic violation did not justify a similar intrusion into the Fourth Amendment rights of the passenger. Pet. App. 16a-25a. The court acknowledged that the *Mimms* rule was based on the "heavy * * * societal interest" in "minimizing the risk of harm to an officer from an armed and dangerous driver," *id.* at 17a, and that the "societal interest is just as great when considering protecting an officer from a passenger as it is when protecting an officer from a driver." *Id.* at 18a. The court concluded, however, that "a police intrusion on the Fourth Amendment interest of the passenger is not so minimal or merely incremental as to be of no more than slight significance in the weighing operation." *Id.* at 20a.

The Court of Special Appeals explained that when a vehicle is lawfully stopped, the driver "is subject to further detention," is required to produce a driver's license and vehicle registration, and may be "subject to receiving a traffic ticket or citation, if not, indeed, to custodial arrest for the infraction." Pet. App. 19a. In contrast, the court stated, "[o]nce the automobile has slowed down sufficiently for the passenger safely to alight, * * * the passenger is subject to no mandatory detention whatsoever. The passenger is

presumptively free to abandon the driver to the clutches of the law and to hail a cab." *Id.* at 20a. Moreover, "a traffic stop *per se* does not, without more, focus suspicion on a passenger as either a wrongdoer or as a possible source of danger to the officer." *Id.* at 23a. The court concluded that an officer's prerogative to order a passenger out of a stopped vehicle "is not automatic, but requires, for justification, some individualized or particularized suspicion." *Id.* at 25a-26a.

The Court of Appeals of Maryland denied certiorari. Pet. App. 37a.

## SUMMARY OF ARGUMENT

In *Pennsylvania* v. *Mimms*, 434 U.S. 106 (1977) (per curiam), this Court held that a police officer who stops a vehicle for a traffic violation may order the driver to get out of the vehicle without running afoul of the Fourth Amendment's reasonableness requirement. The Court reasoned that the "legitimate and weighty" interest in the safety of an officer conducting a traffic stop outweighs the "*de minimis*" intrusion resulting from the officer's request to get out of the vehicle, such that no particularized suspicion is required to justify the officer's action. 434 U.S. at 108, 110-111. That analysis applies to an officer's order to a passenger to exit as well.

The interest that the *Mimms* rule promotes—protection of the officer's safety during a traffic stop—is especially weighty. The threat to officers making traffic stops is varied and unpredictable. Recent statistics show that more than 5,000 assaults on law enforcement officers occur each year during traffic stops, and that as many as 13.7% of all felonious killings of law enforcement officers occur during traffic



stops and pursuits. The potential unknown danger to an officer is no less great when [illegible]sed by a passenger than a driver. Indeed, the officer's interest in his security is heightened when a stopped vehicle has multiple occupants and the officer's attention is focused principally on the driver. To ensure that a routine encounter does not unexpectedly escalate into a confrontation, the officer must have the latitude to order both the passenger and the driver out of the car.

The passenger's privacy interest in choosing to remain in the vehicle during the stop does not outweigh those safety interests. This Court's decisions have long noted the reduced expectation of privacy held by persons traveling by automobile, both because of the public nature of that activity as well as the extent of public regulation of vehicles. It is thus neither unusual nor greatly intrusive for a passenger to be in a vehicle that is subject to a traffic stop. Ordering the passenger briefly to exit the vehicle represents only a small additional intrusion on the passenger's privacy during the stop. An officer may constitutionally examine a passenger from outside the vehicle, shine a flashlight on the passenger, and touch the passenger if necessary to secure a visible weapon. As with the driver, the incremental intrusion into the passenger's Fourth Amendment rights resulting from the officer's order to get out of the car is *de minimis*.

The Court of Special Appeals erroneously imposed a requirement that officers have a particularized sense of "heightened caution" before being permitted to order a passenger out of a vehicle. The court below reasoned that a passenger is presumptively free to abandon the driver who is subject to a traffic stop and that an order to exit is therefore significantly more

intrusive for the passenger than for the driver. Both driver and passenger, however, are subject to a Fourth Amendment seizure when the vehicle is stopped; the additional intrusion resulting from a direction to exit the vehicle is *de minimis* as to both. Nor did *Mimms* rest on an assumption that the driver poses a threat to the officer because of the driver's commission of a traffic violation. Rather, the *Mimms* rule responds to the inherent "risk confronting an officer as he approaches a person" in the stopped vehicle, 434 U.S. at 110, a risk presented by the passenger as well as the driver. Finally, a "heightened caution" requirement would also create unnecessary confusion over the circumstances in which officers may reasonably ask a passenger to step out of a lawfully stopped vehicle.

## ARGUMENT

### A POLICE OFFICER MAY, CONSISTENT WITH THE FOURTH AMENDMENT, ROUTINELY ORDER A PASSENGER TO EXIT A VEHICLE DURING A LAWFUL TRAFFIC STOP

"The fundamental command of the Fourth Amendment is that searches and seizures be reasonable." *New Jersey* v. *T.L.O.*, 469 U.S. 325, 340 (1985); see *Pennsylvania* v. *Mimms*, 434 U.S. 106, 108-109 (1977) (per curiam) ("The touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'") (quoting *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968)). This Court judges the reasonableness of a particular law enforcement practice by "'balancing its intrusion on the individual's Fourth Amendment interests against



its promotion of legitimate interests.'" *Vernonia Sch. Dist. 47J* v. *Acton*, 115 S. Ct. 2386, 2390 (1995) (quoting *Skinner* v. *Railway Labor Executives' Ass'n*, 489 U.S. 602, 619 (1989)) (internal quotation marks omitted); see *Pennsylvania* v. *Mimms*, 434 U.S. at 109.

Applying that test, the Court held in *Pennsylvania* v. *Mimms* that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." 434 U.S. at 111 n.6. Recognizing "the inordinate risk confronting an officer as he approaches a person seated in an automobile," the Court found the interest promoted by the order to the driver to get out of the vehicle—preservation of the officer's safety—to be "both legitimate and weighty." *Id.* at 110. Against that interest, the Court weighed the "incremental intrusion resulting from the request to get out of the car once the vehicle was lawfully stopped." *Id.* at 109. Observing that "this additional intrusion can only be described as *de minimis*," the Court concluded that "[w]hat is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety." *Id.* at 111 (footnote omitted). Thus, the Court held that an officer's order for a driver to get out of a stopped vehicle is not an unreasonable interference with the driver's Fourth Amendment rights, even in the absence of any "reason to suspect foul play from the particular driver at the time of the stop." 434 U.S. at 109.

The balance struck by this Court in *Mimms* applies here as well. The societal interest in allowing an officer conducting a traffic stop to take reasonable

steps to ensure his own safety is plainly "both legitimate and weighty," 434 U.S. at 110, and it outweighs the passenger's *de minimis* privacy interest in remaining in the vehicle during the duration of the stop.

### A. The Safety Interests Of Officers Making Lawful Traffic Stops Are Legitimate and Weighty

1. This Court has frequently noted that traffic stops are "especially fraught with danger to police officers," *Michigan* v. *Long*, 463 U.S. 1032, 1047 (1983), and that assaults on officers frequently occur during such stops. See *United States* v. *Robinson*, 414 U.S. 218, 234 n.5 (1973) ("a significant percentage of murders of police officers occurs when the officers are making traffic stops"); *Adams* v. *Williams*, 407 U.S. 143, 148 n.3 (1972). Indeed, in *Mimms*, the Court noted the "inordinate risk confronting an officer as he approaches a person seated in an automobile" and "expressly declined to accept the argument that traffic violations necessarily involve less danger to officers than other types of confrontations." 434 U.S. at 110.

2. The Court's concern for officer safety during traffic stops is well justified by the findings of recent studies. These studies show not only the direct threat to officers, but also the varied circumstances in which a seemingly routine stop can become a threatening confrontation. Between 1985 and 1994, for example, 13.7% of the 708 officers feloniously killed in the line of duty (97) were slain during traffic stops and pursuits. U.S. Dep't of Justice Federal Bureau of Investigation, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted*



*1994* (*Uniform Crime Report*) at 30-31.[1] Of the 587,474 officers assaulted between 1985 and 1994, 10.5% were victimized during traffic stops and pursuits (an average of more than 5,000 assaults per year). *Ibid.*

The circumstances in which officers face safety risks when making traffic stops vary greatly. Perhaps not surprisingly, a significant portion of all assaults of officers during traffic stops occurs when the officer is alone—1,931 of the 5,762 such assaults in 1994. *Uniform Crime Report* 72. The threat created in that situation runs a broad spectrum, with 68.3 percent of the assaults involving the use of hands, legs, and the like, 4.8% firearms, .9% knives or other cutting instruments, and 26% other dangerous weapons. *Id.* at 71.

Assailants who wield firearms, and thereby pose the greatest risk, carry them in vehicles in a variety of ways. In a study by the Federal Bureau of Investigation, 34% of the offenders stated that they carried their weapons on their person while in a vehicle, 20% kept their weapons below their seat, and 12% left them on the seat. U.S. Dep't of Justice Federal Bureau of Investigation, *Killed in the Line of Duty: A Study of Felonious Killings of Law Enforcement Officers* 12 (Sept. 1992) (*FBI Study*). These variations confirm common sense—that a potential assailant has a range of options in a vehicle to secrete or store a weapon that might be used to

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[1] These figures are not significantly different for the period 1981-1990, during which 96 officers were killed while making traffic stops. See U.S. Dep't of Justice Federal Bureau of Investigation, *Killed in the Line of Duty: A Study of Felonious Killings of Law Enforcement Officers* 40 (Sept. 1992).

attack an officer during a stop. And statistics suggest that neither training nor experience enables officers to avoid all such violent encounters. Between 1981 and 1990, victim officers killed had an average of nine years of law enforcement service; only five percent had less than one year of service. See *FBI Study* 31.

One way for the officer to try to neutralize a situation, before an occupant of the vehicle can surprise the officer with a weapon, is to have the occupant get out of the vehicle. Other officers may gain a greater sense of security in particular situations by having the passenger or passengers remain in the car.[2] A law enforcement technique need not be applicable in all situations to be valid under the Fourth Amendment. Indeed, while the Court has noted that "[k]eeping the driver of a vehicle in the car during a routine traffic stop is probably the typical practice," police "officers may, consistent with the Fourth Amendment, exercise their discretion to require a driver who commits a traffic violation to exit the vehicle even though they lack any particularized reason for believing the driver possesses a weapon." *New York* v. *Class*, 475 U.S. 106, 115 (1986) (citing *Mimms*).

3. The Court of Special Appeals acknowledged (Pet. App. 18a) that "it is self-evident that an armed and dangerous passenger poses just as great a threat

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[2] See David H. Bayley, "The Tactical Choices of Police Patrol Officers," *in* 5 *Police and Law Enforcement* 83 (Daniel B. Kennedy & Robert J. Homant eds. 1987) (describing varied patterns of whether vehicle occupants are ordered to exit or to stay in a vehicle, and noting that "patrol officers face distinctly different tactical choices at different stages of an encounter").



to an officer as does an armed and dangerous driver" and that therefore "the societal interest is just as great when considering protecting an officer from a passenger as it is when protecting an officer from a driver." Indeed, the danger facing a police officer during a traffic stop may be more substantial when the driver is not the only occupant of the stopped vehicle. An officer conducting a traffic stop ordinarily focuses on the driver and cannot keep a close watch on a passenger inside the vehicle. Authorizing the officer to order the passenger from the car allows the officer to keep the passenger in view. See *Ruvalcaba* v. *City of Los Angeles*, 64 F.3d 1323, 1327 (9th Cir. 1995) ("Having all occupants step out of the vehicle protects the safety of the officer while the officer is dealing with the driver regarding the traffic violation."), cert. denied, 116 S. Ct. 1841 (1996). It also prevents the passenger from gaining access to weapons in the vehicle. A gun in a car that is available to a driver would, in many circumstances, also be within reach of a passenger. See *FBI Study* 12. And not only is a passenger just as capable as a driver of inflicting harm on a law enforcement officer, there is no sound reason to think that a passenger's motivation would be any different from a driver's during a lawful traffic stop. A passenger engaged in criminal activity would feel just as threatened by the arrival of a law enforcement officer on the scene as a driver with criminal designs. In short, the potential threat from a passenger does not differ from the one posed by a driver.

**B. The Intrusion Caused By A Police Officer's Request That A Passenger Exit A Lawfully Stopped Vehicle Is *De Minimis* And Does Not Outweigh The Safety Interests Of The Officer Making The Stop**

1. This Court has long noted that a person traveling in an automobile has a reduced expectation of privacy, because the vehicle "seldom serves as one's residence or as the repository of personal effects" and "travels public thoroughfares where both its occupants and its contents are in plain view." *New York* v. *Class*, 475 U.S. 106, 112-113 (1986) (quoting *Cardwell* v. *Lewis*, 417 U.S. 583, 590 (1974) (plurality opinion)). Consequently, a car and its occupants have "little capacity for escaping public scrutiny." *Class*, 475 U.S. at 113 (quoting *Cardwell*, 417 U.S at 590). The voluntary exposure of one's person to public view necessarily diminishes the legitimate expectations in privacy protected by the Fourth Amendment, as the Court noted in *Katz* v. *United States*, 389 U.S. 347, 351 (1967): "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." A person's reasonable expectation of privacy when traveling by automobile is also diminished by the "pervasive regulation by the State." *Class*, 475 U.S. at 113. Persons in "a motor vehicle must expect that the State, in enforcing its regulations, will intrude to some extent upon that [person's] privacy." *Ibid.*; see *California* v. *Carney*, 471 U.S. 386, 392 (1985) ("The public is fully aware that it is accorded less privacy in its automobiles because of this compelling governmental need for regulation.").

2. Although Fourth Amendment protections extend to automobiles and their occupants, the Court has upheld law enforcement practices directed at



vehicles that necessarily intrude on the interests of passengers in being free from searches and seizures. The stop of the automobile in which the passenger is riding constitutes a "seizure" that interferes with the passenger's interest in reaching a destination without interruption. As this Court has observed, "a traffic stop significantly curtails the 'freedom of action' of the driver and the passengers, if any, of the detained vehicle." *Berkemer* v. *McCarty*, 468 U.S. 420, 436 (1984); see *United States* v. *Hensley*, 469 U.S. 221, 226 (1985) (stop intrudes on "Fourth Amendment interest of the driver and passengers in remaining secure from the intrusion"). Such a stop, however, is lawful if the officer has reasonable suspicion to believe that the driver has committed a crime, see *Hensley*, 469 U.S. at 226, or has probable cause to believe that a traffic offense has occurred, *Whren* v. *United States*, 116 S. Ct. 1769, 1772 (1996).

After stopping a vehicle, an officer may lawfully look inside it and thereby see its occupants. See *Coolidge* v. *New Hampshire*, 403 U.S. 443, 464 (1971). An officer unable to see clearly into the vehicle can move around it to gain a better vantage point from which to look into it. See *Texas* v. *Brown*, 460 U.S. 730, 740 (1983) (plurality opinion of Rehnquist, J.). If the area within the car is unilluminated, the officer may use a flashlight to expose a darkened vehicle and its occupants to light. See *ibid.*; *United States* v. *Dunn*, 480 U.S. 294, 305 (1987); *United States* v. *Lee*, 274 U.S. 559, 563 (1927). These procedures enable the officer to observe and examine a passenger sitting in a vehicle, and do not implicate any protected Fourth Amendment privacy interests. Similarly, an officer may reach into a car and shift a passenger's personal effects if those items obscure from view the vehicle

identification number. See *Class*, 475 U.S. at 114. An officer may also reach into a car to secure a visible weapon held in the waistband of an occupant. See also *Adams* v. *Williams*, 407 U.S. 143 (1972) (officer may search for and seize a weapon upon probable cause).

3. An officer's order to a passenger to get out of a stopped car is only a small additional intrusion. To the extent that the order to exit constitutes a "seizure," it is not significantly more intrusive than the stop of the car itself. And to the extent that the order constitutes a "search," it does not add appreciably to the intrusion on privacy interests that is otherwise authorized as an incident of the stop. Here, for example, there is no doubt that Officer Hughes could have peered into the automobile at respondent, shined a light on him if necessary, and reached into the vehicle to shift any papers respondent may have had on the dashboard or to seize a weapon had the respondent possessed one. Given the availability of those practices, the officer's direction that respondent exit the car constituted, at most, a modest "incremental intrusion" on his privacy. *Class*, 475 U.S. at 121 (Powell, J., concurring). Balanced against the important safety interests at stake, the order was reasonable within the meaning of the Fourth Amendment, even without a showing of particularized suspicion.[3]

[3] If, however, after ordering the passenger to get out of the car, the officer wished to frisk the passenger, that action must be based on objective facts giving rise to reasonable suspicion. See *Terry* v. *Ohio*, 392 U.S. 1 (1968). And the duration of a traffic stop must be reasonably related in scope to its purposes; a further seizure must generally be justified by particularized suspicion. *Berkemer*, 468 U.S. at 439-440; cf. *United States* v. *Sharpe*, 470 U.S. 675 (1985). The existence of these protections



### C. The State Court's Requirement Of Particularized Suspicion Is Unsound

The Maryland Court of Special Appeals held that only when a police officer has some quantum of particularized suspicion, such as a "sense of heightened caution," may the officer direct the passenger to get out of the vehicle. Pet. App. 32a. That conclusion is supported neither by the distinctions between a passenger and the driver of a stopped vehicle nor by Fourth Amendment precedents and policies.

1. In distinguishing this case from *Pennsylvania* v. *Mimms*, *supra*, the court below reasoned that the passenger of a vehicle stopped for a traffic violation, unlike the driver, is not subject to personal detention and investigation based on the traffic offense. Accordingly, the court concluded, the direction to the passenger to exit the vehicle is more than a *de minimis* additional intrusion; rather, the court thought, it constitutes "police interference with the presumptively unfettered liberty" of the passenger to leave the scene of the stop. Pet. App. 20a.

That analysis, however, overlooks the Fourth Amendment consequences of the stop itself. As discussed above, when a car is subjected to a lawful traffic stop, the passenger's freedom, as well as the driver's, is restricted. The officer's action in stopping a car constitutes a "seizure" of all of its occupants.[4] *Berkemer*, 468 U.S. at 436. In addition, ac-

underscores the reasonableness of affording the officer discretion to request that the passenger briefly vacate the automobile so that the stop may be completed in a safe manner.

[4] Thus, courts have held that a passenger has standing to move to suppress the fruits of an unlawful traffic stop, even when he lacks standing to challenge the search of the vehicle.

cepted law enforcement techniques permit an officer to peer into the vehicle and to shine a flashlight inside, notwithstanding the possible intrusion on the passenger's privacy expectations. See pp. 13-14, *supra*. Because the passenger, like the driver, "is being asked to expose to view very little more of his person than is already exposed," *Mimms*, 434 U.S. at 111, the "additional intrusion" amounts to, at most, a "mere inconvenience." *Ibid.*

The Court of Special Appeals assumed that, unlike the driver of a vehicle that has been stopped for a traffic violation, a passenger is ordinarily "free to abandon the driver to the clutches of the law and to hail a cab." Pet. App. 20a. An order directing the passenger to get out of the vehicle, however, would not interfere with any privacy interest of a passenger who wishes to leave the scene, for such a passenger must get out of the car, and expose himself to view, in order to do so.[5]

The Court of Special Appeals also erred in concluding (Pet. App. 23a) that the rule announced in *Mimms* should not be extended to passengers because "a traffic stop *per se* does not, without more, focus

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See, *e.g.*, *United States* v. *Kimball*, 25 F.3d 1, 5-6 & n.3 (1st Cir. 1994); *United States* v. *McKneely*, 6 F.3d 1447, 1450 (10th Cir. 1993); *United States* v. *Roberson*, 6 F.3d 1088, 1091 (5th Cir. 1993), cert. denied, 114 S. Ct. 1230, 114 S. Ct. 1322, and 1383 (1994).

[5] ~~Although~~ This case presents no question of when a police officer may detain a passenger at the scene of a traffic stop. The same safety concerns that justify allowing an officer to order a passenger to get out of the stopped vehicle, however, should also afford the officer discretion to direct the passenger to remain within the car or on the scene during the stop without a showing of particularized suspicion.



suspicion on a passenger as either a wrongdoer or as a possible source of danger to the officer." The rule in *Mimms*, however, was not based on the view that the stop of a vehicle establishes the driver's culpability or dangerousness. Rather, the Court in *Mimms* specifically stated that the officer in that case "had no reason to suspect foul play from the particular driver at the time of the stop." 434 U.S. at 109. Indeed, the applicability of the *Mimms* rule does not depend upon the seriousness of the violation warranting the stop; in *Mimms* itself, the defendant was stopped for driving with an expired license plate. *Id.* at 107. The Court nevertheless noted with approval the State's argument that the practice of asking the driver to get out of the car "was adopted as a precautionary measure to afford a degree of protection to the officer and that it may be justified on that ground." *Id.* at 110.[6]

Even if the privacy expectations of a passenger were somehow greater than those of a driver, the

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[6] The Court of Special Appeals stated (Pet. App. 23a) that in *New York* v. *Class*, 475 U.S. 106 (1986), this Court suggested that its decision in *Mimms* rested in part on "the focusing of suspicion of wrongdoing specifically on the driver." This Court held in *Class* that the Fourth Amendment was not violated when an officer who had stopped the defendant's vehicle for a traffic violation reached into the car to move papers that were covering the car's Vehicle Identification Number. 475 U.S. at 119. Although the Court noted in *Class* that the initial stop of the defendant's vehicle in that case, as in *Mimms*, was based on "probable cause focusing suspicion on the individual affected by the search," 475 U.S. at 117-118, the Court also pointed out that *Mimms* held that officers may require a driver stopped for a traffic violation to get out of the vehicle "even though they lack any particularized reason for believing the driver possesses a weapon." *Id.* at 115.

intrusion at issue in this case is still sufficiently minimal as to be outweighed by the officer's safety interests served by asking the passenger to exit the vehicle. Just as an officer at the scene of an accident or crime may ask an innocent bystander to step aside, to leave the area, or otherwise to cooperate in the officer's effort to secure the area, so too is it reasonable for an officer to ask a passenger briefly to exit a vehicle so that the officer may deal with the driver who has committed a traffic offense without encountering an undue risk of harm.

2. As *Mimms* itself demonstrates, this Court's precedents and Fourth Amendment doctrine do not require a showing of particularized suspicion before an officer may order the passenger out of the car. Although "some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure, * * * the Fourth Amendment imposes no irreducible requirement of such suspicion." *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 560-561 (1976) (footnote and citation omitted); see *Vernonia Sch. Dist.* v. *Acton*, 115 S. Ct. at 2391. Consistent with that principle, and contrary to the Court of Special Appeals' rejection of an "automatic" rule when the officer lacks "individualized or particularized suspicion," Pet. App. 25a-26a, the Court in other contexts has declined to require reasonable suspicion to sustain minimal intrusions incidental to the valid stop of a motor vehicle. See *Michigan Dep't of State Police* v. *Sitz*, 496 U.S. 444 (1990) (stops at highway sobriety checkpoints); *United States* v. *Martinez-Fuerte*, *supra* (stops at permanent checkpoints near border).

Indeed, in part because of the reasonable safety considerations of officers, this Court has upheld the



detention of an occupant of a residence during the execution of a search warrant. *Michigan* v. *Summers*, 452 U.S. 692, 702 (1981). Even though in *Summers* "no special danger to the police is suggested by the evidence in this record," the authority of the officers to detain the occupants was upheld over a Fourth Amendment challenge because "[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." *Id.* at 702-703.[7] For the same reasons, the need to protect an officer's safety during a traffic stop makes it reasonable to order the passenger to exit the stopped vehicle, even when no specific suspicion has focused on the passenger.

3. The Maryland Court of Special Appeals would require officers to have an articulable basis for "heightened caution" before asking passengers to exit from vehicles. Pet. App. 31a-32a. The court left open, however, whether the applicable standard would mirror that adopted in *Terry* v. *Ohio*, 392 U.S. 1 (1968), for an investigative stop and frisk, or would be

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[7] In *Summers*, the Court noted that the existence of probable cause for the search warrant of the residence "gives the police officer an easily identifiable and certain basis for determining that suspicion of criminal activity justifies a detention of the occupant." 452 U.S. at 704. But the Court made that observation in the context of announcing a per se rule that no such particularized suspicion was necessary to justify the detention of an occupant of a premises subject to a valid search warrant: "Thus, for Fourth Amendment purposes, we hold that a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." *Id.* at 705 (footnote omitted).

some undefined lower threshold. Pet. App. 25a-32a. Neither approach would be workable. In *Mimms*, this Court rejected a requirement of particularized suspicion in favor of a "bright line" rule that afforded officers discretion to ask the driver to exit the car, irrespective of whether the situation raised the officer's suspicion. See 434 U.S. at 111. The rule in *Mimms* is thus a precaution; it permits an officer to avoid an unexpected safety risk. This "ounce of prevention" would be lost if the officer had to wait until his suspicions were aroused about the potential risk from the passenger before the officer could take protective measures.

Nor would it be feasible to invent a new tier of Fourth Amendment analysis involving a lesser level of suspicion than required for a *Terry* stop and frisk. See Pet. App. 28a-30a (discussing cases purporting to apply a "heightened caution" approach). Quite apart from the indefinite nature of such a threshold, "by requiring a policeman conversing with a motorist constantly to monitor the information available to him to determine when it becomes sufficient to establish ['heightened caution'], the rule * * * would be extremely difficult to administer." *Berkemer*, 468 U.S. at 435 n.22. The rule adopted by the Maryland Court of Special Appeals, therefore, threatens to create unnecessary confusion for officers seeking to maintain a safe situation during a routine traffic stop.



## CONCLUSION

The judgment of the Court of Special Appeals of Maryland should be reversed.

Respectfully submitted.

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